PERB 7012

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PUBLIC, PROFESSIONAL, AND MAINTENANCE EMPLOYEES, LOCAL 2003, **Petitioners,** **vs.** **PUBLIC EMPLOYMENT RELATIONS BOARD,** **Respondent,** **and** **BLACK HAWK COUNTY,** **Intervenor.**	**Case No. CV 6062** **RULING ON PETITION FOR JUDICIAL REVIEW** (NOTE court's subsequent amendment, filed 12/22/06.)

The Court held a contested hearing on September 15, 2006, on this Petition for Judicial Review. Attorney Matthew Glasson appeared on behalf of Petitioners Public, Professional & Maintenance Employees, Local 2003 (hereinafter "Local 2003"). Attorney Jan Berry appeared on behalf of Respondent Public Employment Relations Board (hereinafter "PERB"). Attorney Brian Gruhn appeared on behalf of the Intervenor Black Hawk County. Following arguments by counsel, review of the court file, the certified record, and applicable law, the Court enters the following ruling.

BACKGROUND FACTS AND PROCEDURAL HISTORY

The present case involves a dispute among the parties as to whether particular proposals made in the course of collective bargaining negotiations constitute mandatory subjects under

Iowa Code §20.9. Petitioner Local 2003 is the certified bargaining representative for certain employees of Black Hawk County.

On December 6, 2004, Local 2003 filed a Petition for Resolution of Negotiability Dispute, Case No. 7012, with PERB. These "negotiability proceedings" involve no evidentiary hearing and present no issues of fact. Rather, the petitioner is required to set forth in its petition the material facts of the dispute and the precise question of negotiability which is submitted for PERB's resolution. *See* Iowa Admin. Code r. 621-6.3 (20).

Black Hawk County and Local 2003 were parties to a collective bargaining agreement which was to expire June 30, 2005. Local 2003 began the process of negotiating the successor contract to become effective on July 1, 2005. Black Hawk County maintained that certain proposals were not within the scope of mandatory bargaining as described in Iowa Code section 20.9. It requested that PERB determine the negotiability of certain proposals. A preliminary ruling was issued on March 3, 2005. The parties then requested a final ruling on some of the issues, which PERB entered on February 1, 2006. Among other issues, PERB's final ruling held that portions of "Proposal 4" were not mandatory topics of bargaining. Local 2003 then timely filed this Petition for Judicial Review in Case No. 7012.

On April 6, 2006, PERB issued a final ruling in another negotiability dispute, Case No. 7218, involving the same parties, but arising under a contract covering a different bargaining unit. In the Case No. 7218 ruling, PERB issued a ruling inconsistent with a portion of its decision in Case No. 7012. Local 2003's Amended Petition requests that the court declare Proposal 4 to be mandatory in its entirety. PERB concedes that the portion of its decision in Case No. 7012, which is inconsistent with Case No. 7218, should be reversed, but requests that the remainder of its decision be affirmed. Black Hawk County, however, requests that the Court

affirm PERB's ruling in Case No. 7012 and reverse the Case No. 7218 ruling. The Court ruled on September 8, 2006 on Petitioner's Motion to Strike Intervenor's Cross-claim, that it would not address both Proposal 9 in Case No. 7218, because it was not timely appealed. Therefore, the Court will only address Proposal 4 from Case No. 7012.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code, governs judicial review of administrative agency decisions. *See* IOWA CODE § 17A (2005). Under Chapter 17, the proper standard of review is dependent upon the section 17A.19(10) grounds alleged in the petition and whether the interpretation or application of the statute is "clearly . . . vested by a provision of law in the discretion of the agency." *Compare* IOWA CODE § 17A.19(10)(c) and §§ 17A.19(10) (l)-(m). The current issue before the Court is a question of law and one of statutory construction. Accordingly, the Iowa Supreme Court has made clear that while deference is accorded decisions of the agency, such deference is not conclusive and it sill remains the duty of the court to ultimately determine the meaning of the statute. *Charles City Community Sch. Dist v. PERB*, 275 N.W.2d 766, 769 (Iowa 1979) (citations omitted).

ANALYSIS AND CONCLUSIONS OF LAW

I. *Mandatory Subjects of Bargaining Under Iowa Code § 20.9*

Iowa Code chapter 20 governs collective bargaining between public employers and public employees. PERB is given the responsibility in negotiability cases of determining whether the proposal being considered constitutes a mandatory topic of bargaining as defined in Iowa Code section 20.9. PERB has adopted rules providing a procedure for the resolution of disputes concerning whether collective bargaining proposals are mandatory topics of bargaining under Iowa Code section 20.9. Iowa Code section 20.9 states:

> The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to **wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon.** Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

IOWA CODE § 20.9 (emphasis added). Section 20.9 creates two types of negotiable subjects: (1) mandatory subjects of bargaining; and (2) permissive subjects of bargaining. *Waterloo Community School Dist. v. Public Employment Relations Bd.* 650 N.W.2d 627, 630 (Iowa 2002) (citing *Decatur County v. PERB*, 564 N.W.2d 394, 396 (Iowa 1997); *City of Fort Dodge v. PERB.*, 275 N.W.2d 393, 395 (Iowa 1979)).

Whether a subject is mandatory or permissive is significant because "[o]nly mandatory subjects of bargaining may proceed through statutory impasse procedures to final arbitration, unless the employer consents." *Waterloo Community School Dist.*, 650 N.W.2d at 630; *see* IOWA CODE § 20.22. A finding that a proposal is mandatory does not make is part of the collective bargaining agreement. Instead, it means that the parties must negotiate and that a proposal may ultimately be submitted to arbitration.

In a two-step test, Iowa courts first determine whether the proposal must come within the meaning of the subjects listed in section 20.9. *Id.* Second, the proposal must not be illegal under any other provision of law. *Id.* Neither party asserts that the proposals are illegal. Therefore, the Court is left to answer only the first question.

Iowa Code section 20.9 mandatory subjects are exceptions to the exclusive rights granted to employers by section 20.7. Therefore, if a proposal is determined to fit within section 20.9, it

is subject to mandatory negotiation regardless of the broader grant of authority given to public employers under section 20.7. *See* IOWA CODE § 20.7 (granting authority in areas including, but not limited to, directing work of employees, hiring, promoting, assigning, and retaining employees). Nevertheless, Iowa courts construe the subjects listed in section 20.9 narrowly and restrictively. *Waterloo Community School Dist.*, 650 N.W.2d at 630 Specifically, based on the statutory language of Chapter 20 the Iowa Supreme Court has rejected the broad scope of the mandatory bargaining found in the National Labor Relations Act. *See Iowa City Ass'n of Fire Fighters, IAFF Local 610 v. Iowa Public Emp. Rel. Bd.*, 554 N.W.2d 707, 710 (Iowa 1996).

"The question is really whether the proposal, on its face, fits within a definitionally fixed section 20.9 mandatory bargaining subject." *Waterloo Community School Dist.*, 650 N.W.2d at 630 (citations and internal quotation marks omitted). What the proposal would bind the employer to do if adopted by the arbitrator determines the scope of a disputed proposal. *Id.* The current duties of the Court in analyzing the proposal have nothing to do with the fairness or merits of a particular proposal. Iowa courts look only to the subject matter of the proposal. *Id.* The Court is only charged with the duty of characterizing the subject matter of the proposal. *See Charles City Sch. Dist. v. PERB*, 275 N.W.2d at 769. The Iowa Supreme Court has noted, however, that nearly every proposal, depending on its language, could point to one of the topics mentioned in section 20.9. Ultimately, examination of the proposal will reveal the subject, scope, or "predominant characteristic" of the proposal. *See State v. PERB*, 508 N.W.2d at 675. The Court takes caution to read proposals literally. *Id.* at 674. Only when a section 20.9 subject escapes easy definition, should the court employ a balancing of interests. *Id.* (holding such an approach to be unnecessary in most cases).

In attempting to determine the meaning to be given a word used in a statute, the Court must examine the statute's language and, unless a contrary intention is evident, give the words their ordinary and commonly understood meaning. Unless the meaning is unclear, or it appears adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions, the Court is powerless to search for an alternate meaning. *City of Fort Dodge v. PERB*, 275 N.W.2d 393, 396-97 (Iowa 1979) (citations omitted). The purpose of conducting this examination is to assure that only those proposals, which are truly within the meaning of section 20.9 are labeled as mandatory subjects of bargaining.

II. *Case No. 7012, Proposal 4*

Local 2003 contends that the proposal in the present case predominantly involves the mandatory topic of "hours." The proposal states:

Proposal 4

ARTICLE 16
HOURS OF WORK AND OVERTIME

> Section 8. Work Schedule: Employee's work schedule will be posted by the Employer three (3) weeks in advance. The posted work schedule will not be changed at the employee's request except in the case of an emergency or an approved request for time off. Employees shall not be required to find their own replacement in order to have a time off request approved. Should it be necessary, in the judgment of the Employer, to establish daily or weekly work schedules departing from the posted schedule, the Employer shall first attempt to seek volunteers to staff the schedule changes on a last worked last selected basis. If there is an insufficient number of volunteers, the employer will select staff on a rotational basis beginning with the least senior employee of the selected shift. Except for emergencies, such schedule changes shall be notified to employees and Union at least three days in advance.

The ruling in Case No. 7012 held that the portion of the proposal pertaining to an employee's lack of duty to find a replacement in order to have time off request was mandatory, while the remainder of the proposal was not. It is Local 2003's position that the entire proposal consists of

mandatory items. Local 2003 claims support for this position in PERB's ruling in Case No. 7218. The Case No. 7218 ruling involved a similar issue to that in Proposal 4 of Case No. 7012. The Case No. 7218 language at issue reads:

> Proposal 9
>
> ARTICLE 14
> HOURS OF WORK AND OVERTIME
>
> Section 4, Shift Defined: The first shift shall be any shift commencing between 7:00 a.m. and 2:59 p.m. The second shift shall be any shift commencing between 3:00 p.m. and 10:59 p.m. The third shift shall be any shift commencing on or after 11:00 p.m. Flex-time may vary the above time if agreed to by the department head and the employee. The flex-time will not cause any increase or loss of wages or benefits. The employee's work schedule will be posted by the Employer two (2) weeks in advance.

Within its Case No. 7218 decision, PERB ruled inconsistently with its decision in Case No. 7012 and held that the last sentence of the above-quoted proposal was mandatory under the topic of "hours of work." A comparison of these provisions and the PERB rulings is appropriate.

1. *"Employee's work schedule will be posted by the Employer three (3) weeks in advance." and "The employee's work schedule will be posted by the Employer two (2) weeks in advance."*

When looking to the plain language of Proposal 4, it would require the employer to post the employee work schedules three weeks in advance. Proposal 9 is similar but requires the employer to post the schedule two weeks in advance. PERB and Local 2003 share the position that the when and where of being told an employee's hours is akin to where and when an employee is paid, which was held to be mandatory in *Waterloo Community Sch. Dist*, 650 N.W.2d at 633. Black Hawk County, disputes the persuasiveness of the *Waterloo Community School District* decision. This Court agrees that the decision in *Waterloo* is not controlling authority on the specific question before the court. Therefore, the Court returns to the required analysis.

Undeniably, nearly every proposal, depending on its language, could point to one of the topics mentioned in section 20.9. In this case it is argued that this portion of the proposal fits within the sphere of "hours." PERB has previously held that the matter of starting and quitting times of employees is mandatorily negotiable under the section 20.0 topic of "hours." *See, e.g.*, *Sergeant Bluff-Luton Community Sch. Dist.*, 75 PERB 715. Topics of section 20.9, however, are to be construed narrowly and restrictively, and encompass all the "fundamental aspects" of the topic under consideration. *Decatur County*, 564 N.W.2d at 397.

When looking to what the proposal would bind the employer to do if adopted by the arbitrator, the Court finds that the timing of when a schedule is posted does not, on its face, fit within a definitionally fixed section 20.9 mandatory bargaining subject. *See Waterloo Community School Dist.*, 650 N.W.2d at 630 (citations omitted). It is not the particular starting and quitting times that are at issue in this case. Instead, it is merely how far in advance the employer is required to inform the employees of those times. The Court is simply unwilling, under the mandate of construing section 20.9 subjects narrowly, to expand the plain meaning of "wages" to include the logistics of schedule posting. In further support of this conclusion, the Court views such a practice to fall within categories of employer's rights contained within Iowa Code section 20.7. In particular, employers are given the exclusive power, duty and right to "[m]aintain the efficiency of governmental operations." IOWA CODE § 20.7(4). The details and logistics of how schedules and job assignments are conveyed to employees is clearly a decision based primarily on the type of work conducted and in light of efficiency concerns. Moreover, employers are granted exclusive power to "[d]etermine and implement methods, means, assignments, and personnel by which the public employer's operations are to be conducted." *Id.* § 20.7(6). Based on the foregoing analysis, the Court is convinced that both proposals pertaining

to the timing of schedule posting are permissive bargaining subjects under Iowa Code chapter 20. Consequently, PERB's decision in Case No. 7012 is affirmed.

2. *"The posted work schedule will not be changed at the employee's request except in the case of an emergency or an approved request for time off. Employees shall not be required to find their own replacement in order to have a time off request approved."*

Local 2003 urges upholding PERB's ruling in Case No. 7012, which held that the portion of the proposal pertaining to an employee's lack of duty to find a replacement in order to have time off request was mandatory. Even under the requirement that subjects listed in section 20.9 be interpreted narrowly and restrictively, the Court agrees with PERB's decision. *See Waterloo Community School Dist.*, 650 N.W.2d at 630.

Conditions under which an employee may obtain time off are clearly within the fundamental aspects of the subjects of "vacations" and "leaves of absence." The Court will not belabor its analysis of this portion of the proposal. The Court can conceive few more pertinent aspects of these mandatory subjects. Accordingly, PERB's ruling as to this portion of Proposal 4 is affirmed.

3. *"Should it be necessary, in the judgment of the Employer, to establish daily or weekly work schedules departing from the posted schedule, the Employer shall first attempt to seek volunteers to staff the schedule changes on a last worked last selected basis. If there is an insufficient number of volunteers, the Employer will select staff on a rotational basis beginning with the least senior employee of the effected shift."*

Iowa courts have had the opportunity to differentiate between the mandatory topics of vacation and leaves of absence, and the permissive topics of staffing and assignments. *See State*, 508 N.W.2d at 676. The Iowa Supreme Court has made clear that "collective bargaining proposals which predominantly concern the issue of staffing constitute permissive subjects of bargaining." *Id.* (citing *Clinton Police Dep't Bargaining Unit v. PERB*, 397 N.W.2d 764, 767 (Iowa 1986) (finding proposal requiring guidelines for backup assistance in emergency situations

to be predominantly an issue of manpower despite its indirect involvement with mandatory topic safety on the job); *City of Newton*, 78 PERB 1322 (1978) (finding proposal requiring a particular number of officers to be on a shift at all times to be predominantly an issue of staffing)). Section 20.7 of the Iowa Code makes clear that public employers are given exclusive power to determine and implement assignments and personnel by which the public employer's operations are to be conducted. IOWA CODE § 20.7(6).

The Iowa Supreme Court in *Waterloo* examined a proposal that attempted to regulate the tasks that could be assigned the teachers on particular days and during certain times of day. *Waterloo*, 650 N.W.2d at 627. The Iowa Supreme Court concluded that the proposal would "adversely affect the employer's exclusive right to control the work to be performed." *Id.* Although the proposal was part of a wage proposal, the *Waterloo* decision reversed the district court and the Iowa Public Employee Relations Board to find that the proposal was a subject of permissive bargaining.

PERB contends that sentence in the current proposal is correctly viewed under the topic of assignments rather than "hours," stating that "proposals which seek to control how employees will be assigned, or how the employer's operations will be staffed, are merely permissive." *PERB's Brief*, p. 15 (citing *State v. PERB*, 508 N.W.2d at 676; *Clinton Police Department*, 397 N.W.2d at 767). The Court agrees with PERB's conclusion on this issue. Were the proposal to involve the resolution of conflicts for vacation or leave of absence requests, the Courts conclusion might be different. *See State*, 508 N.W.2d at 676 (citing *State of Iowa*, 81 PERB 1846 and 1855) (finding proposal which determined order of scheduling employee vacation requests to be mandatory)). However, the current proposal is merely attempting to put in place a set of requirements for the employer to adhere to when they need to select employees to fill

vacant shifts. Nor does the fact that "seniority" as a basis for assignment convert this proposal into a mandatory topic. The proposal does not involve how seniority is acquired or how it determined. Instead, the proposal merely uses seniority as a basis for determining assignments. Under this plain reading of the proposal the Court is firmly convinced that it relates to staffing and/or assignments, and is therefore a permissive subject of bargaining. PERB's decision on this point is affirmed.

4. *"Except for emergencies, such schedule changes shall be notified to the employees and the Union at least three (3) days in advance."*

This sentence directly relates to the previous section of Proposal 4. Nevertheless, PERB's argument on this portion of the proposal is similar to that offered for the first sentence of Proposal 4. Accordingly, PERB argues that notification to employees of when they are to work is a fundamental aspect of the mandatory topic of "hours." Again, the Court does not agree.

Under a strict and narrow interpretation of the term hours, the Court is unable to bring the three day notice provision within its meaning. When looking to what the proposal would require the public employer to do, the Court sees only a temporal notification requirement, not a proposal which dictates the number of hours an employee is required to work. Changing work load demands are obviously a concern for public employers. Section 20.7 of the Iowa Code gives public employers authority to deal with such concerns under the topics of assignments, methods of operation, and directing the work of its public employees. *See* IOWA CODE § 20.7 (1), (6). This notification proposal appears more closely connected to those powers of the public employer, than those topics reserved for mandatory negotiation under section 20.9. The Court would like to reiterate that merely designating this portion of the proposal to be permissive does not prevent the parties from resolving the issue. It merely restricts it from becoming part of a later arbitration. This portion of PERB's decision is reversed.

ORDER

IT IS THE ORDER OF THE COURT that the decisions of the Iowa Public Employment Relations Board in Case No. 7012 are **AFFIRMED IN PART and REVERSED** consistent with the above ruling..

SO ORDERED this 13th day of November, 2006.

Richard G. Blane II

RICHARD G. BLANE, II, District Judge
Fifth Judicial District of Iowa

Clerk: ___J ___C ___U ___X

11/14/06 CD

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PUBLIC, PROFESSIONAL, AND MAINTENANCE EMPLOYEES, LOCAL 2003, **Petitioners,** **vs.** **PUBLIC EMPLOYMENT RELATIONS BOARD,** **Respondent,** **and** **BLACK HAWK COUNTY,** **Intervenor.**	**Case No. CV 6062** **AMENDMENT TO COURT'S RULING ON PETITION FOR JUDICIAL REVIEW**

On November 27, 2006, Respondent Public Employment Relations Board (PERB) filed a "Motion to Enlarge and Amend Findings/Conclusions and Modify Judgment as Appropriate. This administrative appeal involves a dispute among the parties as to whether particular proposals made in the course of collective bargaining negotiations constitute mandatory subjects under Iowa Code § 20.9. The Court issued its ruling on November 14, 2006. The Court received no other filings from other parties on the issues raised in PERB's pending motion or requesting further clarification of this Court's ruling. Following review of PERB's motion and the prior Ruling on Petition for Judicial Review, the Court makes the following amendments:

1. Sentences 2 and 3 of the contested proposal were examined together by the Court on page nine of its earlier ruling. Those sentences read: "The posted work schedule will not be changed at the employee's request except in the case of an emergency or an approved

request for time off. Employees shall not be required to find their own replacement in order to have a time off request approved." PERB ruled Sentence 2 to be permissive, while ruling Sentence 3 to be mandatory. The Court examined these proposals together despite neither party contesting PERB's ruling on Sentence 3. Therefore, PERB's ruling on Sentence 3 remains unchanged. Based on the Court's analysis, however, PERB's ruling on Sentence 2 is reversed. Both Sentence 2 and Sentence 3 fall within the scope of mandatory topics of bargaining.

2. Sentence 6 of the contested proposal reads: "Except for emergencies, such schedule changes shall be notified to the employees and the Union at least three (3) days in advance." PERB determined Sentence 6 to be a matter of permissive bargaining. The Court, on page eleven of its earlier ruling, agreed that this sentence was a matter of permissive bargaining. Accordingly, PERB's ruling on Sentence 6 of the proposal is affirmed. The last sentence on page 11 of the November 14, 2006 Ruling is stricken.

The Court's Ruling of November 14, 2006 in all other regards stands.

SO ORDERED this 18th day of December, 2006.

RICHARD G. BLANE, II, District Judge
Fifth Judicial District of Iowa

Clerk: J V C U X

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